



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Utah State Office

P.O. Box 45155

Salt Lake City, UT 84145-0155

<http://www.blm.gov>



IN REPLY REFER TO:

3100

(UT-922)

May 19, 2008

CERTIFIED MAIL – Return Receipt Requested

### DECISION

Joel Webster	:	Protest to Inclusion of Parcels
Theodore Roosevelt	:	In the Feb. 19, 2008 Competitive
Conservation Partnership	:	Oil and Gas Lease Sale
2321 Gerald Ave.	:	
Missoula, Montana 59801	:	

### Protest Denied

On January 4, 2008, the Utah Bureau of Land Management (BLM) provided notice that 57 parcels totaling approximately 85,000 acres of land would be offered in a competitive oil and gas lease sale to be held on February 19, 2008. The notice also indicated that the protest period for the lease sale would end February 4, 2008. By electronic facsimile received by BLM on February 4, 2008, Joel Webster of the Theodore Roosevelt Conservation Partnership (TRCP) protested the inclusion of the following 44 parcels on public lands administered by BLM's Vernal, Richfield and Salt Lake Field Offices (FOs):

UTU85941	UTU85950	UTU85959	UTU85971	UTU85983
UTU85942	UTU85951	UTU85960	UTU85972	UTU85984
UTU85943	UTU85952	UTU85961	UTU85973	UTU85985
UTU85944	UTU85953	UTU85962	UTU85974	UTU85986
UTU85945	UTU85954	UTU85963	UTU85975	UTU85987
UTU85946	UTU85955	UTU85967	UTU85976	UTU85992
UTU85947	UTU85956	UTU85968	UTU85977	UTU85994
UTU85948	UTU85957	UTU85969	UTU85980	UTU85996
UTU85949	UTU85958	UTU85970	UTU85982	

By errata notice dated February 12, 2008, BLM withdrew five parcels administered by the Richfield FO from the sale (UTU85972, UTU85975, UTU85976, UTU85977, and UTU85980). As a result, the protest to these 5 parcels is denied as moot. For the reasons discussed below, the protest to the remaining 39 parcels is denied.

A. TRCP Protest Contentions and BLM Responses.

The following provides BLM's response to the bulleted points/contentions on pages 1-2 of the TRCP protest, as further explained, if they are, elsewhere in the protest, and to other protest points not included in the bullets. As a preliminary matter, many of the protest points express TRCP's sincere concern about the potential effects of oil and gas development on public lands on wildlife, including big game and the sage grouse, and on TRCP's stated organizational goal of working to ensure that oil and gas development in the western states is balanced with the needs of fish and wildlife resources and with the recreational needs of TRCP's members. However, most of the TRCP protest points set forth only very general statements or conclusions. For BLM to have a reasonable basis to consider protests that TRCP may submit in the future, TRCP should be as specific as possible in its protest and should identify for each parcel it protests the specific ground for protest and explain how it applies to the parcel. Any allegations of error based on fact must be supported by competent evidence, and a protest should not merely state general concerns or conclusions, or simply incorporate by reference arguments or factual information provided in a previous protest. Further, TRCP must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to its allegations, and explain how such stipulations or notices do not obviate the allegations. Failure to comply with any of the foregoing may result in the summary dismissal of the protest.<sup>1</sup>

- TRCP contention: The most recently updated information on designated big game crucial winter ranges and migration routes, and sage-grouse strutting and nesting areas developed by the Utah Division of Wildlife Resources (UTDWR) has provided the BLM with significant new information establishing the important characteristics of these and other special surface values of these areas, that needs to be studied in supplemental National Environmental Policy Act (NEPA) analyses. In addition, the BLM Memorandum of Understanding (MOU) with the UTDWR constitutes significant information triggering the duty to supplement current analyses. Protest at 1, 3, 6-7.

BLM response: BLM carefully considered current UTDWR information in determining what parcels to include in the February 2008 lease sale. In that process, BLM determined that although the information is relatively new, it is not the type of "significant new information" that required BLM to complete supplemental NEPA analyses prior to sale and lease of the subject parcels. As set forth in the Council of Environmental Quality (CEQ) regulations implementing NEPA, the duty to supplement arises when there is new information showing that the proposed action will affect the quality of the environment in a significant manner or to a significant extent not already considered. See 43 C.F.R. § 1502.9; Marsh v. Or. Natural Res. Council, 490 U.S. 360, 374 (1989). Neither the UTDWR information nor the BLM/UTDWR MOU falls within those parameters, and nothing in the general allegations in the TRCP protest establishes otherwise. Moreover, BLM also contacted UTDWR in December 2007 and January 2008 to ensure that it did not have additional information that might give rise to the duty to supplement, and it did not have any such information.

- TRCP contention: Recent research conducted on the impacts of oil and gas development on crucial winter range has concluded that development has an immediate

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<sup>1</sup> It is well established that BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 17, 20-21 (1992); John W. Childress, 76 IBLA 42, 43 (1983); Patricia C. Alker, 70 IBLA 211, 212 (1983); Geosearch, Inc., 48 IBLA 76 (1980).

and significant effect on mule deer and elk use and population of winter ranges. Protest at 1, 7.

BLM response: TRCP does not identify the “recent research” that it references, and BLM will not speculate over what research the TRCP is relying on to make its general assertion about research conclusions. One paragraph on page 7 of the protest briefly refers to the Sublette WY Mule Deer Study, which TRCP represents found significant impacts to mule deer use of winter range from energy development. If it is this study that TRCP is referring to in its phrase “recent research,” the reference is too general to show error in BLM’s decision to include the protested parcels in the lease sale. Nothing in the TRCP protest attempts to show why the results of the Wyoming study, whatever they may be, have relevance to the protested parcels. If a protestant is unwilling to attempt to demonstrate that a study from another state with possibly different development scenarios, resources and environmental conditions should govern BLM’s pre-lease sale NEPA analysis in this state, BLM is under no duty to attempt to make those connections for the protestant. Further, a BLM attempt to apply the findings of studies that are not demonstrated applicable to on-the-ground conditions in Utah would not be a proper application of the best available science. As to the impact of oil and gas development on the recreational use and/or populations of mule deer and elk winter ranges in Utah, no specific documentation of significant impacts to big game herds has been identified. The NEPA analyses concerning the protested parcels, such as the Rich County Oil and Gas Leasing Environmental Assessment UT-020-2008-013 (EA), supports the conclusion that the reasonably foreseeable development scenarios on the protested parcels will not cause significant impacts to wildlife.

- TRCP contention: A recent decision by the United States District Court for the district of Idaho, [Western Watersheds Project v. U.S. Forest Service, 2007 WL 4287476] made a decision that the U.S. Fish and Wildlife Service (FWS) review the potential listing of greater sage-grouse under the Endangered Species Act as amended (ESA). The BLM should take no action that will further harm greater sage-grouse until FWS has made its listing determination on remand. The species may be listed and, if so, some of that habitat may be designated as crucial under the ESA. This is pursuant to the new information provided from numerous studies on the impacts of oil and gas development on sage-grouse that has been supported by the BLM (see Naugle and Holloran). Protest at 2, 8-9.

BLM response: The above-referenced Western Watersheds decision involves a challenge to the decision by the FWS to not list the greater sage-grouse as threatened or endangered under the ESA. The decision does not involve a challenge to oil and gas leasing or development in Utah. As such, the fact of the decision being issued, or some of its discussion concerning impacts to the sage-grouse from energy development in the Powder River Basin, arguably has no relevance to the February 2008 lease sale. There is nothing in the decision that would justify a suspension by BLM of its oil and gas leasing program in Utah in sage-grouse habitat. Further, in the event that the FWS were to list the species under the ESA, BLM has sufficient authority, for example under 43 C.F.R. § 3101.1-2, to ensure compliance with the ESA in any subsequent oil and gas activities on the affected parcels.

In referring to the Western Watersheds decision, the TRCP protest also references the work of two respected scientists (Naugle and Holloran) in a way that suggests they support the point TRCP is trying to make. The research of Naugle and Holloran merits careful consideration in determining future management of sage-grouse across the

intermountain west. However, Utah BLM does not agree with the TRCP suggestion that either author supports the management prescription (no action prior to listing decision) advocated by the TRCP protest. According to the scientific research provided recently by Naugle and Holloran, there is some evidence that impacts to sage-grouse are so minimal as to be not measurable where oil and gas development involves well-spacing that is not greater than one well-pad per square-mile. The reasonably foreseeable development scenario with regard to the protested parcels is less than that threshold and, therefore, calculable impacts to this important and sensitive species are not expected from the leasing of the protested parcels.

- TRCP contention: Current stipulations and conditions of approval are not adequate to protect and manage crucial big game winter ranges and migration routes and sage-grouse nesting and strutting areas, and have a history of being waived in many BLM field offices. Protest at 2.

BLM response: BLM has concluded, after discussions with UTDWR and careful consideration by BLM experts, that no big game migratory routes exist upon the protested parcels. Further, the relevant lease stipulations will protect crucial big game winter ranges and sage-grouse nesting and strutting areas. In addition, BLM has broad authority under applicable law (i.e., Mineral Leasing Act, Federal Land Policy and Management Act, the Standard Lease Form, etc.) to effectively manage, protect, and adapt to any new information and conditions regarding sage-grouse breeding grounds and other sensitive resources on the subject leases. The TRCP criticism of lease stipulations and conditions of approval states mere opinion unsupported by any analysis. Further, BLM's sale of the leases involves only that transaction and does not allow any surface disturbance. TRCP's opinion regarding conditions of approval (COAs) is premature and incorrectly assumes to know what COAs might be imposed on future development proposals. TRCP also alleges that BLM conditions of approval have a history of being waived. This is not supported by any evidence in Utah, and this unsubstantiated claim has no basis.

- TRCP contention: Absent comprehensive habitat management planning for mule deer, elk, pronghorn, and wild trout populations and how BLM is supposed to meet the requirement to manage habitats to meet UTDWR objectives for populations, leasing and subsequent surface development and road construction will render these lands unsuitable for management of mule deer, elk and pronghorn crucial winter range and migration routes and important trout fisheries. Protest at 2.

BLM response: TRCP generally asserts that oil and gas development itself renders lands unsuitable for management of migration routes and as winter range for big game. The Utah BLM does not believe that this is the case. Expert wildlife managers of the UTDWR and the Utah BLM have successfully managed big game and their winter habitats under the multiple-use and sustained yield mandates of the Federal Land Policy and Management Act for many years. Both UTDWR and BLM have comprehensive management plans for the areas underlying the lease parcels that include management standards for the species and their habitats about which TRCP expresses concern. These plans and management strategies have resulted in the successful creation of exceptional hunting and fishing opportunities in Utah. While it is not the expressed responsibility of the BLM to meet objectives set by the UTDWR, BLM works closely with the UTDWR and the State of Utah to manage habitat and protect surface resources in support of management prescriptions for wildlife. The Utah BLM does not agree with TRCP's opinion, unsupported by any facts or evidence in its protest, that oil and gas

development automatically renders lands unsuitable for management of crucial habitat and other uses and resources.

- TRCP contention: The Executive Order 13443, Facilitation of Hunting Heritage and Wildlife Conservation Sec. 2 (c) states that federal agencies must, “Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning.” Protest at 2.

BLM response: Implementation and compliance with Executive Order 13443 is important to BLM. The past and present cooperative relationship between BLM and the State of Utah has resulted in exceptional recreational hunting and fishing opportunities throughout the State. The expansion of these opportunities will continue as current partnerships and initiatives, like the Healthy Lands Initiative and the Utah Partnership for Conservation and Development that work to enhance habitats, move forward. The results of these efforts continue to improve the health of existing habitat and provide for expansion and improvement of habitats for important and sensitive species of wildlife.

- TRCP contention: The BLM is not following the recommendations of the Western Governors’ Associations Policy Resolution 07-01, which asks for the protection of wildlife migration corridors and state wildlife agency designated crucial habitats. Protest at 2.

BLM response: TRCP’s contention is incorrect. BLM has engaged the UTDWR, throughout the pre-leasing process and BLM continues to inform the UTDWR on its activities and solicit its input on wildlife matters. In the pre-leasing review process conducted for the February 2008 sale, BLM consulted with UTDWR regarding the potential for impacts to migration corridors, and both agencies concluded that there are no migration corridors currently identified on any of the subject parcels. BLM will continue to cooperatively manage habitats and take every opportunity to communicate with the State of Utah and consider any concerns raised by it in BLM’s management of public lands and wildlife habitats.

- TRCP contention: BLM has not conducted new on-the-ground inventories or environmental analysis required by the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (NEPA) and the Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.* (FLPMA). Protest at 2.

BLM response: TRCP’s general contention is both legally unsound and fails to identify any resource that it believes the relevant NEPA documentation did not accurately identify. If a duty existed to conduct new on-the-ground inventories prior to the inclusion of parcels in a lease sale, the duty would arise under NEPA and not FLPMA. The duty would arise under NEPA in the event the existing NEPA analyses did not adequately identify baseline environmental conditions of the subject parcels. However, prior to the February 2008 lease sale, BLM’s Vernal and Richfield Field Offices carefully reviewed their current NEPA analyses and concluded that their respective identification of baseline environmental conditions and potential impacts for oil and gas leasing on the resources was adequate and, consequently issued Determinations of NEPA Adequacy (DNAs) for the relevant parcels. As mentioned above, BLM’s Salt Lake Field Office prepared the Rich County Oil and Gas Leasing EA (UT-020-2008-013) and subsequently issued a Finding of No Significant Impact and Decision Record (FONSI/DR) based on the EA.

- TRCP contention: BLM violated NEPA by failing to conduct site-specific pre-leasing analysis of mineral development impacts on the special public lands in the disputed parcels. Protest at 9-10.

BLM response: TRCP's contention lacks merit. BLM is not required by NEPA to conduct new analyses each time it conducts a quarterly lease sale. Rather, BLM has a duty to review its existing NEPA analyses to determine whether they adequately identify the baseline environmental conditions/resources of the subject parcels and the potential impacts of leasing the subject parcels on those conditions/resources. That is precisely what BLM did with respect to the February 2008 lease sale. As mentioned above, prior to the sale, BLM's Vernal and Richfield Field Offices carefully reviewed their current NEPA analyses, which included the environmental impact statements underlying their current land use plans. Based on that review, those Field Offices concluded that their respective NEPA documents adequately identified the baseline environmental conditions and potential impacts of oil and gas leasing on the identified resources and, consequently, issued DNAs. In addition, BLM's Salt Lake Field Office prepared the Rich County EA and, based on the site-specific analysis in the EA, subsequently issued its FONSI/DR. The TRCP protest did not identify a significant impact from leasing that BLM did not analyze. Thus, TRCP has not shown any error on BLM's part. See Biodiversity Conservation Alliance, 171 IBLA 218, 228 (2007) (dismissing appeal in which the appellants did not present any evident that "BLM overlooked any likely impact or failed to appreciate the nature of magnitude of an impact.").

- TRCP contention: BLM violated NEPA by failing to consider NSO (no surface occupancy) and No Leasing Alternatives. Protest at 10-11.

BLM response: The generality of TRCP's contention underscores both the lack of value in generalized protest points that are mere conclusions lacking any underlying analysis, and the well-established precedent that BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. TRCP's present contention regarding the alternatives it believes BLM should have considered clearly falls within these principles. For BLM to consider and respond to the contention, the TRCP protest should have set forth which of the three Field Office NEPA analyses (or all three Field Offices analyses if applicable) it is referring to and explain why TRCP believes the underlying analysis or analyses is not adequate. In that sense, TRCP had the burden of providing objective evidence and explaining why the alternatives it believes should have been studied (NSO and no leasing) would have accomplished the purpose of the proposed action, be technically and economically feasible, and have a lesser impact than the leasing categories BLM studied. Since TRCP was unwilling to shoulder that burden, BLM has no duty to respond to TRCP's general contention. BLM notes however, that the TRCP contention is not factually accurate. For example, the Salt Lake Field Office's Rich County EA analyzed the no-leasing alternative and considered but declined to study in detail issuing the subject leases subject to NSO stipulations.

- TRCP contention: BLM violated FLPMA by failing to prevent undue or unnecessary degradation of mule deer crucial ranges, elk winter ranges, mule deer and elk migration routes, and wild trout habitat characteristics in both the Bear River and Sevier River watersheds, and active sage-grouse leks and associated habitat. Protest at 11-12.

BLM response: TRCP correctly recognizes that FLPMA requires BLM to prevent unnecessary or undue degradation in its management of the federal public lands. However, TRCP's contention that BLM has violated FLPMA relies entirely on TRCP's unsupported assumption that the sale of the protested parcels will cause unnecessary or undue degradation to the lands underlying the subject parcels. However, nothing in the NEPA analyses BLM relied on in determining which parcels to include in the sale in any way supports TRCP's assumption, and the TRCP protest provides no evidence to show otherwise. Contrary to TRCP's assumption, the mere issuance of leases does not constitute unnecessary or undue degradation of the public lands. See Colorado Envtl. Coalition, et al., 165 IBLA 221, 229 (2005) (oil and gas development is not per se unnecessary or undue degradation). Further, for one to show that oil and gas development would have this detrimental effect, one must at a minimum show that a lessee's operations would be conducted in a manner that does not comply with applicable law or regulations, prudent management and practice, or reasonably available technology. See id. at 229. Since any oil and gas development that might take place on the subject parcels will be able to go forward only after additional NEPA review (and review under other statutes if applicable) is completed on a specific development proposal, TRCP's present assumption that leasing of the protested parcels will cause unnecessary or undue degradation is premature and groundless.

In conclusion, for the above-stated reasons, the TRCP Protest is denied. BLM received sale offers on all 39 parcels. BLM will issue leases for parcels UTU85943, UTU85947, UTU85948, UTU85951, UTU85952, UTU85957 through UTU85960, UTU85963, UTU85967, UTU85969, UTU85973, UTU85974, UTU85982 through UTU85986, UTU85994 and UTU85996 after issuing this decision. Parcels UTU85941, UTU85942, UTU85944 through UTU85946, UTU85949, UTU85950, UTU85953 through UTU85956, UTU85961, UTU85962, UTU85968, UTU85970, UTU85971, UTU85987, and UTU85992 received other protests. Resolution of other protests may govern whether or not a lease for a particular parcel may be issued.

#### Appeal Opportunity:

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B §4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to each party named in this decision and to the Office of the Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find attached a list of those parties who purchased the subject parcels at the February 19, 2008 sale and therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

*/s/ Jeff Rawson*

Selma Sierra  
State Director

Enclosures

Appendix 1. Form 1842-1 (2pp)  
Appendix 2. List of purchasers (1p)

cc: List of purchasers (6)  
James E. Karkut, Office of the Regional Solicitor, 125 South State St., Suite 6201,  
Salt Lake City, UT 84138

bcc: WO-310, 501LS  
Field Offices: Richfield, Salt Lake, Vernal  
Reading Files, UT-910, UT-930, UT-922, UT-952  
Case Files



List of Purchasers for February 2008  
TRPC Protested Parcels

CTD, Inc.  
3355 N. Five Mile Road, #282  
Boise, ID 83713

Bro Energy, LLC  
4834 So. Highland Dr., #200  
Salt Lake City, UT 84117

Energy West Corp.  
PO Box 1441,  
Denver, CO 80204

Delta Petroleum Corp.  
370 17th Street, Suite 4300  
Denver, CO 80202

Craig Settle  
5897 S Fulton Way  
Greenwood Village, CO 80111-3719

Stonegate Resources, LLC  
4994 E. Meadows Dr.  
Park City, UT 84098